

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO **APR 18 2005**

SONJA LUJAN and
RONALD AHLIN,

Plaintiffs,

v.

Civ. No. 04-0057 RB/RLP

D. R. HORTON, INC.,
a New Mexico Corporation,

Defendant.

MATTHEW J. DYKMAN
CLERK

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on Defendant's Motion and Brief to Compel Discovery. Plaintiffs have sued their former employer for discrimination under the Age Discrimination in Employment Act ("ADEA") and the New Mexico Human Rights Act. They allege, *inter alia*, loss of wages. Because this court has jurisdiction pursuant to the ADEA, the federal, not state, discovery rules apply.

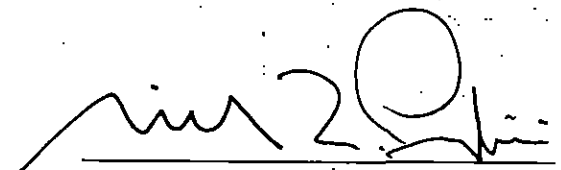
Federal Rule of Civil Procedure 34 provides that documents may be sought. There is a 30-day time limit to respond by way of inspection, production, or objection. The failure to comply with the time limit waives any objection the producing party may have. *Starlight Internat'l, Inc. v. Herlihy*, 181 F.R.D. 494, 496 (D. Kan. 1998). In the event of timely-filed objections, the requesting party may file a motion to compel pursuant to Fed.R.Civ.P. 37. The failure to timely file such a motion waives any right to contest the objection under certain circumstances. *Continental Ind., Inc. v. Integrated Logistics Solutions LLC*, 211 F.Rd.D. 442 (N.D. Ok. 2002).

As best the court can tell from the parties' submissions, Defendant served a request for production on Plaintiffs requesting documents, including tax returns, showing Plaintiffs' income for the previous two years. Plaintiffs timely objected to this discovery, but produced some W-2 forms and other financial information. Instead of filing a motion to compel, Defendant served a second request for production two months or so later and received untimely responses. Still not in possession of the requested tax forms, Defendant waited until the close of discovery to file this motion to compel the tax returns.

The court finds that Defendant is tardy in filing its Motion to Compel; nevertheless Fed.R.Civ.P. 37 does not provide a precise time limit for so filing and Plaintiffs have failed to show prejudice. Tax returns when lost wages are at issue are discoverable. *Bennett v. Emerson Tool Co.*, 2001 WL 1155301 (D. Kan. 2001) (unpublished opinion). Defendant seeks only two years of filings, which is not burdensome. Plaintiffs filing joint returns may redact information related solely to his or her spouse. *Id.* at *3. The information shall be produced no later than April 29, 2005.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel [Doc. 50] is granted as stated herein.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', written over a horizontal line.

Richard L. Puglisi
United States Magistrate Judge

For the Plaintiffs: Doug Foster, Esq.
For the Defendant: Stephanie Landry, Esq.